SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 158X)[1]

UNION PACIFIC RAILROAD COMPANY–ABANDONMENT EXEMPTION–
IN MCPHERSON, ELLSWORTH AND RICE COUNTIES, KS

Decided: August 27, 2003

On October 24, 2000, Union Pacific Railroad Company (UP) and Central Kansas Railway Limited Liability Company (CKR) jointly filed a petition seeking an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to permit UP to abandon, and CKR to discontinue service over, a 28.02-mile line of railroad: (1) between milepost 523.02, near Geneseo, and milepost 495.80, near Lindsborg (Hoisington Subdivision); and (2) between milepost 531.40 and milepost 530.60, near Lindsborg (McPherson Subdivision), in McPherson, Ellsworth, and Rice Counties, KS. By decision and notice of interim trail use or abandonment (NITU)[2] served on February 9, 2001, the exemption was granted subject to trail use, public use, environmental conditions, and standard employee protective conditions.

As pertinent here, on February 13, 2001, the City of Marquette, KS (Marquette), filed a request for a NITU. By decision and notice served March 7, 2001, the Board, inter alia, modified the February 9 NITU and authorized a 180-day period, until September 3, 2001, for Marquette to negotiate an interim trail use/rail banking agreement with UP for a 2-mile segment of the right-of-way of the Hoisington Subdivision between milepost 504.5 and milepost 506.5. By decisions served September 4, 2001, and December 31, 2001, the negotiating period was extended to January 2, 2002, and April 2, 2002, respectively.

By letter filed on March 5, 2002, Marquette again sought an extension of the negotiating period. In a decision served on March 29, 2002, the request was denied based on concerns about whether the 2-mile segment at issue was still eligible for a NITU. The decision added, however,

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[1] This proceeding formerly embraced STB Docket No. AB-406 (Sub-No. 12X), Central Kansas Railway Limited Liability Company–Discontinuance of Service Exemption–In McPherson, Ellsworth and Rice Counties, KS. By letter filed April 10, 2001, CKR's representative notified the Board that the discontinuance of service was consummated on April 5, 2001.

[2] See 16 U.S.C. 1247(d) and 49 CFR 1152.29.

that UP and Marquette could submit additional evidence explaining why the segment continued to qualify for a NITU, thus warranting the sought extension.

Marquette responded by letter on April 8, 2002, and filed supplemental evidence on April 17, 2002. On August 12, 2003, Marquette filed a letter indicating that UP has agreed to donate property in furtherance of its trail plans. Marquette requests another extension of 180 days to finalize terms of interim trail use.

Review of the record, as now supplemented, leads to the conclusion that the segment remains eligible for a NITU. Moreover, UP has indicated that it is agreeable to the extension request. Where, as here, the carrier has not consummated abandonment of the segment of the right-of-way at issue and is willing to continue trail use negotiations, the negotiating period may be extended.[3] The parties have shown that the additional time is necessary to complete negotiations. An extension of time will promote the establishment of trails and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Accordingly, the NITU negotiating period will be extended until February 24, 2004.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Marquette's request to extend the interim trail use negotiating period under the NITU for the portion of the line between milepost 504.5 and 506.5 is granted. The negotiating period is extended until February 24, 2004.

2. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

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[3] See Rail Abandonments–Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).